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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICHARD KLEIN, RAYMOND
URIAS, AND SANDRA J. GUNTER,
individually and on behalf of all others
similarly situated;

Plaintiffs,

v.

National Collegiate Student Loan Trust
2005-3; National Collegiate Student
Loan Trust 2006-3; National Collegiate
Student Loan Trust 2007-1; National
Collegiate Student Loan Trust 2007-2;
National Collegiate Student Loan Trust
2007-3; National Collegiate Student
Loan Trust 2007-4; Pennsylvania
Higher Education Assistance Agency
d/b/a American Education Services; and
Transworld Systems, Inc.,

Defendants.

Case No.: 2:22-cv-01392-GMN-BNW

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' JOINT MOTION
TO STRIKE, OR ALTERNATIVE
RESPONSE TO PLAINTIFFS'
NOTICE OF SUPPLEMENTAL
AUTHORITY**

1 On June 8, 2023, Plaintiffs filed a Notice of Supplemental Authority apprising
2 this Court of the decision of the district court in *Davis v. KeyBank, N.A., et al.*, No. 2:22-
3 cv-01645-JAD-EJY, (ECF No. 58) (D. Nev. May 3, 2023), in which it referred the case
4 to the Nevada bankruptcy court rather than ruling on the defendants' motions to dismiss,
5 as Plaintiffs similarly requested here in their Responses to Defendants' Motions to
6 Dismiss. (ECF Nos. 56 & 57) The *Davis* order was issued after the deadline for
7 submitting Plaintiffs' Responses had passed. On June 16, 2023, Defendants filed a
8 "Joint Motion to Strike, or in the Alternative, Response to Plaintiffs' Notice of
9 Supplemental Authority." (ECF No. 74) Plaintiffs' counsel hereby apologize for not
10 conforming to the local rules by failing to obtain leave before filing supplemental
11 authority. Given the applicability of *Davis* to this case, Plaintiffs respectfully request
12 this Court in its discretion treat Plaintiffs' Notice of Supplemental Authority as a Motion
13 for Leave to File Supplemental Authority and deny Defendants' Joint Motion to Strike.

18 Local Rule 7-2(g) permits supplementation with "pleadings, briefs, authorities,
19 or evidence" for "good cause." LR 7-2(g). Plaintiffs concede that "LR 7-2(g) requires
20 parties to acquire leave of court before filing supplemental briefs," *Alps Prop. & Cas.*
21 *Ins. Co. v. Kalicki Collier, LLP*, 526 F. Supp. 3d 805, 812 (D. Nev. 2021) (citation
22 omitted), and, under the rule, "[t]he judge may strike supplemental filings made without
23 leave of court." LR 7-2(g). Plaintiffs' counsel apologize for failing to obtain leave
24 before filing a notice of supplemental authority. Given the relevance of *Davis* to this
25 matter and the pending motions to dismiss, Plaintiffs respectfully request this Court
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1 exercise its discretion to treat Plaintiffs' Notice of Supplemental Authority and this
2 response as a motion to obtain leave to file a notice of supplemental authority. *See JP*
3 *Morgan Chase Bank, N.A. v. Res. Grp., LLC*, No. 217-cv-225-JCM-NJK, 2018 WL
4 894612, at *5 (D. Nev. Feb. 13, 2018) (unpublished) (denying motion to strike notice
5 of supplemental authorities filed without leave under Local Rule 7-2(g) because good
6 cause existed).
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9 Good cause exists for this Court to consider the *Davis* order despite Plaintiffs'
10 failure to adhere to the rules because it is particularly persuasive and helpful. "Good
11 cause may exist either when the proffered supplemental authority controls the outcome
12 of the litigation, or when the proffered supplemental authority is precedential, or
13 particularly persuasive or helpful." *Alps Prop. & Cas. Ins. Co.*, 526 F. Supp. 3d at 812
14 (citing *Hunt v. Washoe Cty. Sch. Dist.*, Case No. 3:18-cv-00501-LRH-WGC, 2019 WL
15 4262510, at *3 (D. Nev. Sept. 9, 2019)). In *Alps Property & Casualty Insurance*
16 *Company*, for instance, the court concluded good cause existed where the supplemental
17 motions from another district court were "particularly persuasive and helpful because
18 they also involve[d the p]laintiff, address[ed] the same policy provisions []. . . under
19 similar factual circumstances, and in the same procedural posture," *even though* the
20 orders were not binding and were "out-of-circuit and applying the substantive law of
21 other states." *Id.* at 812.
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26 Here, the *Davis* order arises under similar factual circumstances and in the same
27 procedural posture. Moreover, the *Davis* order arises from the same circuit, the same
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1 district, and applies the same substantive federal law to some of the same issues raised
2 in the motions pending before this court. Furthermore, unlike cases where a party
3 unnecessarily filed a brief early or failed to cite existing authorities, this is “a situation
4 where there has been a new development in the law following the closing of a filing
5 deadline.” *Greer v. Freemantle Prods.*, 622 F. Supp. 3d 1010, 1015 (D. Nev. 2022),
6 appeal dismissed sub nom. *Greer v. Freemantle Prods.*, No. 22-16318, 2022 WL
7 18862474 (9th Cir. Dec. 14, 2022).

10 Defendants argue this Court should ignore the *Davis* order because it is “only the
11 non-binding, non-controlling order of another judge in this District.” But “good cause”
12 under LR 7-2(g) extends beyond directly-controlling precedent. *See Alps Prop. & Cas.*
13 *Ins. Co.*, 526 F. Supp. 3d at 812 (considering order although it is in another district court
14 and out-of-circuit); *Tenorio v. Dep’t of Tax’n*, No. 2:20-cv-00517-ART-VCF, 2023 WL
15 2228363, at *3 (D. Nev. Feb 24, 2023) (finding good cause to supplement authority
16 with non-controlling district court cases because “the proffered cases involve similar—
17 though not identical—[]issues” and “other courts within this district have granted
18 motions for leave to file similarly non-controlling authority” (citing *Alps Prop. & Cas.*
19 *Ins. Co.*, 526 F. Supp. 3d at 812)). Even if they are not be binding, in cases like this,
20 where the proffered supplemental authority “include[s] published and unpublished
21 federal court cases that are relevant to the issues in [an] action, the supplemental
22 authority is helpful in developing the Court’s analysis,” and “good cause” to consider
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1 the proffered authority exists. *Stallone v. Farmers Grp., Inc.*, No. 2:21-cv-01659-GMN-
2 VCF, 2022 WL 10091489, at *1, n.1 (D. Nev. Oct 15, 2022).

3 Finally, in support of their motion to strike, Defendants cite two cases where
4 courts in this district have declined to allow supplemental authorities. Both of these
5 cases are distinguishable. First, *Snow Covered Capital, LLC v. Fonfa*, No. 2:22-cv-
6 01181-CDS-BNW, 2023 WL 3884631, at *2–3 (D. Nev. June 8, 2023) involved
7 supplemental briefs containing additional argumentation styled as “joinders,” whereas
8 here, the challenged filing contained no new argument but mere notification of an
9 additional authority. Second, in *Liberty Insurance Corporation v. Brodeur*, 462 F. Supp.
10 3d 1092, 1096 (D. Nev. 2020), the motion to strike a deposition taken following close
11 of discovery was not opposed. Plaintiffs agree this Court has the discretion to strike a
12 supplemental authority filed without leave and once more apologize for failing to obtain
13 leave before filing.

14 For these reasons, Plaintiffs respectfully request this Court treat the Notice of
15 Supplemental Authority as a motion for leave to file supplemental authority and
16 consider the *Davis* order in ruling on the pending motions because “good cause” exists.
17 Plaintiffs do not address the remaining new arguments and requested relief in
18 Defendants’ alternative “Response to Plaintiffs’ Notice of Supplemental Authority”
19 (see ECF No. 74, pp. 3–5), which amount to supplemental argument on the pending
20 Motions to Dismiss.

1 WHEREFORE, Plaintiff respectfully requests the Court deny Defendants' Joint
2 Motion to Strike, treat Plaintiffs' Notice of Supplemental Authority and this Response
3 as Motions for Leave to File Notice of Supplemental Authority, and consider the Notice
4 of Supplemental Authority in ruling on the pending motions.
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7 Dated: June 30, 2023.

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